

**Remarks**

Claims 1-11 are pending in the application.

Claims 1-5, 7 and 9-11 are rejected under 35 U.S.C. §102(b) as being anticipated by Rudrapatna et al. (US 5,592,470, hereinafter Rudrapatna).

Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Rudrapatna in view of Rao (US 5,940,738, hereinafter Rao).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or simply is clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., simply to avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, because a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the

original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

**Rejection Under 35 U.S.C. §102**

**Claims 1-5, 7 and 9-11**

Claims 1-5, 7 and 9-11 are rejected under 35 U.S.C. §102(b) as being anticipated by Rudrapatna. The rejection is traversed.

Anticipation requires the presence in a single prior art disclosure of each and every element of the claimed invention, arranged as in the claim. The Rudrapatna reference fails to disclose each and every element of the claimed invention, as arranged in independent claim 1. Specifically, the Applicant's claim 1 recites:

1. A method for increasing channel utilization in a **video broadcast system**, comprising:

receiving, at a head-end, a request for a **video program** from one of a plurality of subscriber stations;

determining, at said head-end, whether said requested **video program** is associated with one of a plurality of subsets of **video channels**, wherein said plurality of subsets of **video channels** comprises a first subset of **video channels** representing a first subset of **video broadcast channels** having a first subscriber viewership level greater than a threshold level, a second subset of **video channels** representing a second subset of **video broadcast channels** having a second subscriber viewership level less than said threshold level, and a third subset of **video channels** representing on-demand channels having a third subscriber viewership associated with video-on-demand;

causing substantially continuous transmission of said first subset of **video broadcast channels** from said head-end toward said plurality of subscriber stations;

causing transmission of said second subset of **video broadcast channels** from said head-end to said plurality of subscriber stations based upon availability of channels in said second subset of channels and assigning video programming corresponding toward said request to an available one of said second subset of channels; and

causing transmission of said third subset of **video channels** from said head-end toward said plurality of subscriber stations upon assigning video programming corresponding to said request to an available one of said third subset of channels.

Rudapatna teaches a method for allocating bandwidth resources by assigning channels in response to varying demand for “different **classes of service**” col. 1, line 64. However, by “different classes of services,” Rudapanta is not referring to a “**subsets of video channels**” as disclosed in the Applicant’s claim 1. By contrast, Rudapanta is differentiating between:

- “wireless packet signaling channels” (col. 4, lines 44-45)
- “downlink broadcast video service channels” (col. 4, line 56 – *note: only one service class referenced in Rudapanta is designated as video broadcast*)
- “downlink interactive video on demand channels” (col. 4, line 57)
- “guard spectrum” (col. 4, line 58)
- “uplink narrow band” (col. 4, line 60)
- “auxiliary packet response channel” (col. 4, line 61)

A “class of service” is not equivalent to a subset of channels, much less “**subsets of video channels**.” Instead, a “class of service” refers to different **types** of services, requiring different channel configurations (e.g. wide-band vs. narrow-band, uplink vs. downlink, etc...). Thus, assigning “classes of service” to respective channels in Rudapanta is not equivalent to the claimed “method for increasing channel utilization in a **video broadcast system**.”

Moreover, the classes of services in Rudapanta listed above clearly include only one service class designated as video broadcast. Therefore, even if any aspect of the claimed method and that of Rudapanta were comparable, Rudapanta does not directly or even indirectly teach “a **second subset of video broadcast channels**” as disclosed in claim 1.

At least for the reasons presented above, Rudapanta fails to disclose each and every element of the claimed invention as arranged in Applicant’s independent claim 1 and independent claim 1. As such, the Applicant’s claim 1 is not anticipated by Rudrapatna and is patentable under 35 U.S.C. §102. Furthermore, since all of the dependent claims that depend from the independent claims include all the limitations of

the respective independent claim from which they ultimately depend, each such dependent claim is not anticipated by Rudrapatna and is patentable under 35 U.S.C. §102.

The Applicant respectfully requests the Examiner withdraw the rejection.

**Rejection Under 35 U.S.C. §103**

**Claim 6**

Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Rudrapatna in view of Rao. The rejection is traversed.

This ground of rejection applies only to dependent claims and is predicated on the validity of the rejection under 35 U.S.C. §102 given Rudrapatna. Since the rejection under 35 U.S.C. §102 given Rudrapatna has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Rao supplies that which is missing from Rudrapatna to render the independent claims anticipated, this ground of rejection cannot be maintained.

The Applicant respectfully requests the Examiner withdraw the rejection.


**Conclusion**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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